IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

MONDAY, THE THIRD DAY OF JULY
TWO THOUSAND AND SIX

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

* * *

WP.Nos.11852, 11012 & 10998 of 2006

Between: **WP.No.11852 of 2006**

Kaswa Venkatesham, s/o. Hanumandlu, age 43 years,
Occ. Business, r/o. Sircilla Road,
Kamareddy town, Nizamabad district & 14 Ors. …
Petitioners

Versus

The State of Andhra Pradesh,
Represented by its Secretary,
Municipal Department,
AP Secretariat, Saifabad,
Hyderabad & 2 Ors. …
Respondents

Counsel for the Petitioners: **Sri P.Giri Krishna**

Counsel for the Respondents: **Sri Polisetti Radhakrishna**

(contd.2nd page)

Between: **WP.No.11012 of 2006**

**Cheela Ramu, s/o late Cheela Harinatham,
aged about 35 years, r/o.H.No.1-6-70, Sircilla Road,
Kamaredy town, Nizamabad district & Ors. …
Petitioners**

Versus

**The State of Andhra Pradesh,
Roads & Buildings Department,
Secretariat, Saifabad, Hyderabad,
Represented by its Principal Secretary & Ors. …
Respondents**

Counsel for the Petitioners: **Sri B.Nalin Kumar**

Counsel for the Respondents: **Sri Polisetti Radhakrishna**

Between: **WP.No.10998 of 2006**

**K.Ravikanth, s/o. late Hanumandlu, aged 49 years,
Occ.business. r/o.H.No.1-6-2, Sircilla Road,
Kamareddy town, Nizamabad district & Ors. … Petitioners**

Versus

**The Kamareddy Municipality,
Represented by its Commissioner,
Kamareddy, Nizamabad district. …
Respondent**

Counsel for the Petitioners: **Sri G.Ranapratap**

Counsel for the Respondents: **Sri Polisetti Radhakrishna**

COMMON ORDER :

All these three writ petitions are being disposed of by a common order in view of similarity of facts and also common questions of law arising in all these writ petitions.

2. The petitioners herein aggrieved by the action of the respondents in trying to proceed with the demolition activity of the houses specified in these writ petitions had approached this court praying for positive directions.

3. In all these writ petitions notice before admission had been ordered. *Statusquo* for a limited period was granted and subsequent thereto the same was being extended.

4. Sri Polisetti Radha Krishna, the learned standing counsel had taken notice to file counter-affidavits in all these matters and opposed these matters.

5. Sri Nalin Kumar, Sri Giri Krishna and Sri B.Parmeshwar Rao representing Sri Ranapratap were heard on behalf of the petitioners and Sri Polisetti Radhakrishna, the learned standing counsel for the Municipality was heard on behalf of the respondents.

6. Sri Nalin Kumar, the learned counsel would maintain that the stand taken by the writ petitioners is that it is only 80 feet road, whereas the concerned municipality had taken stand that it is 100 feet road and hence rest of the road margin had been encroached. The learned counsel would also maintain that there is a dispute whether a particular piece of land is in fact a road or private property of the citizen it would be always just and necessary to put the party on notice before proceeding with any demolition activity. The learned counsel would also maintain that though section 192 sub-section 2 of A.P.Municipalities Act, (hereinafter referred to for short as 'the Act' for the purpose of convenience) may not be applicable by its four corners in principle, this prohibition in a way supports his contention. While further elaborating the submissions, the learned counsel also placed reliance on a decision of the Division Bench of this court in ***PILLI LAKSHMANA RAO & ORS. V/s. Executive Officer, Gram Panchayat, Challapalle & Ors., reported in 2000 (5) ALT-246 (D.B.)*** and would maintain that in-as-much-as it is an action involving civil consequences, the principles of natural justice to be followed and even if there is no specific statutory provision in-as-much-as general principles are applicable, the municipality in question is bound to issue notice before further proceeding with the demolition activity.

7. Sri Giri Krishna and Sri B.Parmeshwar Rao representing Sri Rana Pratap also made similar submissions on the same lines adopting the submissions made by Sri Nalin Kumar.

8. On the contrary, Sri Polisetti Radha Krishna, the learned standing counsel representing the Municipality in question would maintain that this is not the case where any disputed question of fact is there. The learned counsel demonstrated before this court with the approved layouts and would submit that in the light of the same, there cannot be any doubt or any controversy whatsoever that the road is 100 feet road only. The learned counsel would also maintain that in such a case, it is needless to say that these parties who approached the court are encroachers, may be the parties might have encroached a portion of the property. In such a case to say that even such encroachers who had encroached upon the road margins would be entitled to notice, the local bodies would be placed into serious inconvenience. The counsel would also further maintain that section 192 sub-section 2 of the Act specifies under what circumstances in such cases notices to be given and when the statutory right ordains particularly mode, horizon of principles of natural justice cannot be widened since such principles can be said to be curtailed or restricted by virtue of the said statutory restriction.

9. Heard the learned counsel on record. Perused the material available on record.

10. WP.No.11012 of 2006 is filed by the petitioners for a writ of mandamus directing the respondents not to demolish or deal with private properties of

the petitioners bearing H.Nos.1-6-70, 1-5-132, 1-5-17, 1-11-71/1, 1-11-70, 1-11-71/B, 1-11-58 except strictly in accordance with law and after giving appropriate and effective opportunity of hearing to the petitioners and after declaring the impugned action of the respondents in seeking to demolish the private properties of the petitioners without following the procedure prescribed by law as arbitrary, discriminatory, violative of Articles 14, 21 and 300-A of the Constitution of India, rule of law, null and void, consequently direct the respondents not to encroach or demolish the private properties of the petitioners without following the procedure prescribed under law in the interest of justice and pass such other suitable orders.

11. It is averred in the affidavit filed in support of the writ petition that the petitioners are residents of Kamareddy town, Nizamabad district and they own immovable properties with RCC building standing on Sircilla road, Nizamabad district. The petitioners also had furnished the details of the house numbers. It is also stated that the petitioners have filed registered sale deeds and also municipal sanction permission for construction and tax-receipts. The particulars of different deeds and also tax-receipts had been specified in detail.

12. It was further averred in the affidavit filed in support of the writ petition that Sircilla road joins highway and the respondents-authorities appears to have undertaken widening of Sircilla road and un-authorisedly the respondents without following due process of law and without acquiring

private land as required under the Land Acquisition Act, high-handedly resorting to demolition activity of the private building in the name of road widening. It is also stated that absolutely they kept quiet and again they had commenced the said activity. The said action is violative of Articles 14, 21 and 300-A of the Constitution of India. This is the stand taken by the writ petitioners.

13. The counter-affidavit filed by the municipality is common in all these writ petitions but a specific stand was taken that Sircilla-Karimnagar road is R&B and PWD and the said highway is 100 feet wide road and the stand taken by the petitioners is that the existing road is 80 feet width is not the correct stand.

14. It is further stated that it is incorrect to say that Sircilla locality of Sircilla road is residential locality and traffic on the road is very less. In fact it is a commercial locality and the road is connected to NH-7 to Sircilla-Karimnagar road and it is business locality and the traffic on the said road is very high and it is incorrect to say that about five years back the road widened from 60 feet to 80 feet by demolishing the petitioners houses. In fact, since from the beginning, it is, 100 feet wide R&B, PWD road. The petitioners herein constructed their houses by encroaching the 100 feet wide road without obtaining any permission from the then Gram Panchayat or from Kamareddy Municipality. In fact the petitioners herein encroached 100 feet wide road and constructed their houses by encroaching 10 feet to 15 feet on either side of

the road without any permission from the Gram Panchayat/Kamareddy Municipality.

15. It is also stated that there was an approved layout at the time of Gram Panchayat-Kamareddy and Municipality approved by the Director of Town and Country Planning, A.P., Hyderabad, maintaining 100 feet R&B, PWD (State Highway) towards Sircilla-Karimnagar road. There are layouts approved by LP.No.470/1979 by the Gram Panchayat by showing 100 feet wide road. LP.No.371/85 was approved with 100 feet wide road. LP.No.152/85 was also approved as 100 feet wide road, LP.No.70/84 was approved as 100 feet wide road. LP.No.8/83 and 144/894 were approved as 100 feet wide road. In view of the above approved layouts, there is an existing 100 feet wide road. Further the master plan was approved to the Kamareddy Municipality vide GO.Ms.No.486, M.A., dated 19-9-200 wherein the width of R&B and PWD road was 100 feet wide is earmarked within the municipality limits.

16. It is further averred in the affidavit that the road development plan vide plan no.1/2002 within the municipal limits and approved by the RD DT & CP., A.P. Hyderabad, which was mentioned that the road width is 100 feet towards Sircilla road. As per G.O.Ms.No.79, dated 8-5-2006 and also letter given by the Executive Engineer, R & B Department, vide Lr.No.DB/HD-1/2006-2007, dated 13-6-2006, the respondent municipality has given the marking to the said houses, which effected in the 100 feet existing road by

taking center point on either side of the road as 50 feet. In fact the Government has sanctioned the widening and strengthening of Sircilla Karimnagar, Yellareddy road from KM 95/O to 98/2 (Kamareddy Town Portion) vide GO.Ms.No.79, dated 8-5-2006. As per the above G.O., the Executive Engineer, R & B, Nizamabad, on 13-6-2006 has addressed a letter to the Commissioner, Kamareddy Municipality duly requesting not to give any permission to permanent constructions upto 60 feet from center of the road. The Municipality has given the markings to the structure, which were affected in the 100 feet wide road by taking into center point of the road, and it is 50 feet on either side. Due to the rapid development of the Kamareddy Municipality and due to heavy traffic in Sircilla Kamareddy town, the encroachments made by the petitioners have to be removed keeping in view of the public convenience in order to avoid congestions, accidents etc.

17. It is further stated that the petitioners cannot claim any title or right over the 100 feet road as per the approved layout stated supra and they are the encroachers to the public road. In fact some of the residents in that locality requested the Municipality to remove their constructions in the 100 wide road and made an application to grant additional FAR exemptions. The petitioners approached this court with most un-cleaned hands and they want to stall the entire process either one way or the other. It is pertinent to mention here that the respondent-municipality has given markings to the affected portions. The

said road is maintained by R & B only. It is further submitted that the Government granted a sum of Rs.2 crores for the development of the entire Sircilla-Karimnagar road. Now the petitioners cannot claim any compensation, as they are only encroachers of 100 feet public road and hence they are not entitled to any relief whatsoever.

18. A reply affidavit is filed narrating several details and taking a specific stand that even in the plans as approved by the Gram Panchayat, Kamareddy-Sircilla road is shown to be 80 feet road only. Several other further factual facts had been narrated to substantiate their stand that they entitled to the issuance of notice before proceeding with further demolition activity. Both the parties have placed before this court certain material papers like; tax-receipts, plans and other documents like-wise approved layout, approved plan and other material to substantiate their respective stand.

19. WP.No.10998 of 2006 is filed by the petitioners to declare the action of the respondents in trying to demolish a portion of their property bearing D.Nos.1-6-2, 1-6-1 and 5-8-1 situate at Kamareddy, Nizamabad district respectively without issuing any notice as contemplated under section 191 and 192 of A.P. Municipalities Act, as illegal, arbitrary, unconstitutional and violative of the principles of natural justice besides Articles 14, 19 and 21 of the Constitution of India and consequently direct the respondents not to demolish the subject matter of the writ petition without following due process

of law and pass such other suitable orders.

20. It is stated that the petitioners are the absolute owners of the property in question, which is a commercial property and they are succeeding to the said property from their ascendants and they are in possession of the same and carrying on with the business activities. It is stated that as things stood thus, on 30-5-2006, the respondent-municipality and its subordinates trespassed into their property and informed to hand over the marked portion lest they would demolish the building and collect charges incurred therefore.

21. It is further stated that no notice was given to the petitioners and without taking recourse to due process of law, such action is violative of Article 21 and 300-A of the Constitution of India and also Section 192 of the Act.

22. Certain other factual details had been narrated. The property tax-receipts were produced as material papers.

23. In the counter-affidavit filed by Kamareddy Municipality referred to supra, virtually the same stand had been taken as in the first writ petition already referred to supra.

24. The factual matrix as reflected from the respective pleadings of the parties already had been narrated supra. The main question in controversy between the parties appears to be whether the road in question is 80 feet or 100 feet ?

25. No doubt, both the parties placed some material before this court to

substantiate their respective stands.

26. The main contention of the learned standing counsel for the municipality is that in-as-much-as it is only 80 feet road these are encroachers as far as the respective portions are concerned and hence such parties are not entitled to any notice at all.

27. It is true that this is a disputed question of fact i.e., whether the road in question is 100 feet or 80 feet road as contended by the respective parties ?

28. It is not in serious controversy that before taking of demolition activity the respondent-municipality had not served any notice on any of these parties. Evidently that is the reason why such stand had been taken by the respondent-municipality that no notice need be given to these petitioners, who can be styled as encroachers.

Section 192 of the Act reads as hereunder:

> Section 192: 1 **[** Removal of encroachments:- (1) The Commissioner may cause to be removed or altered-
>
> *(a) any projection, encroachment or obstruction (other than a door, or gate or a necessary access thereto, or bar or ground floor windows) situated against, or in front of such premises and in, or over any street;*
>
> (b) *any article whatsoever, hawked or exposed for sale in a public place or in any public street in contravention of the provisions of this Act, together with any vehicle, package, box or any other thing in or on which such article is placed*.

2. If the owner or occupier of the premises proves that any such projection, encroachment or obstruction under clause (a) of sub-section (1) has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

3. No decision made or order passed or proceeding taken by the Commissioner effecting removal of encroachments shall be called in question before a civil court in any suit, application or other proceeding and no injunction shall be granted by any court in respect of any proceeding taken by the Commissioner.**].**

29. If the facts are carefully scrutinized, it is true that sub-section 2 of Section 192 of the Act, would not be attracted.

30. The counsel representing the writ petitioners placed strong reliance on the judgment of the Division Bench of this court in ***PILLI LAKSHMANA RAO & ORS. V/s. Executive Officer, Gram Panchayat, Challapalle & Ors., reported in 2000 (5) ALT-246 (D.B),*** Wherein the Division Bench of this court in the judgment referred to supra at para 7 and 8 observed as hereunder:

"When a property is required for public purpose viz., for widening of roads or for any other purpose, the authorities straightaway cannot take the law into their hands and jump into the premises

and attempt to evict the occupants or dispossess them or demolish their property. Before taking any such action, the authorities concerned shall issue a notice notifying as to the nature of the property, the purpose for which it is required, to whom it belongs and the action proposed calling for explanation or objections, if any, from the occupants and after considering the said objections or explanation, the authorities shall pass appropriate orders, if necessary, by giving oral hearing wherever there is a dispute as to the ownership of the property. In cases where demolition has already taken place, the authorities that barring a few cases, in most of the cases which we came across and dealt with separately, no separate orders of eviction, dispossession or demolition as the case may be, have been passed. In cases of demolition also, they were not preceded by any order or notice of demolition. The complaint of the occupant/s though looks misconceived but after hearing the arguments. Court found there was an attempt by the Government either to widen the roads or clear the encroachments. But, before doing that, the authorities have to follow certain Principles of natural Justice. Hence, the writ petition is disposed of reserving liberty to the State to take action, if it so desires, after complying with the requirements.

If the authorities, viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of

eviction, dispossession or demolition, first they shall issue a notice to the occupant/s calling upon him/them to show-cause as to why the proposed action shall not be taken. In receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorized occupation and shall determine whether the property in question belongs to the Government or any other local self Government authority or to the occupant/s. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned shall determine the loss caused to the occupant/s on the basis of the assessment to be made by the engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take appropriate steps to disburse the amount qualified forth with. If the demolition took place is in respect of the property of the Government, the question of payment of damages will not arise. The occupant/s is/are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this Order calling upon the claimant/occupant/s to show-cause as to why the action proposed shall not be taken by giving 60 days time to file the objections, if any. The person interested viz., the occupant/s shall

submit him/their objections or explanation within the time stipulated together with any other documents he/they would like to rely upon in support of his/their case. On receipt of such explanation/objections and documents, if any, the Mandal Revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter. In case of any enquiry, the same should be conducted in a summary way and the occupant/s shall produce all the evidence which he/they wants/want to rely upon before the Mandal Revenue Officer on the appointed day.

31. The concept and principles of natural justice, if otherwise, crystalised by statutory provisions or limitations are placed in relation thereto, the same may have to be taken into consideration. In that view of the matter submissions at length were advanced in relation to sub-section (2) of Section 192 of the Act. At the same time the broader concept of the principles of natural justice where an action involves the civil consequences also cannot be forgotten.

32. Here, the citizens had approached this court to making out a grievance that without putting them on notice their constructions are being removed for road widening purpose. As already referred to supra, the question whether the road is 80 feet or 100 feet road is a disputed question of fact. Be that as it may, in view of the fact that the demolition activities ought to be carried on in

relation to the properties in question being one involving civil consequences, this court is of the considered opinion that the principles of natural justice to be followed before initiating any such action.

33. In view of the same, the respondents are hereby directed to put the petitioners on notice and take appropriate decision on verification of the records, if any, which would be produced in relation thereto in accordance with law and then proceed thereafter.

34. It is needless to say that whether the road in question is 80 feet or 100 feet road being a question of fact, the same may have to be decided and in the event of the petitioners falling under the category of 'encroachers', it is needless to say that such parties are not entitled to any compensation whatsoever.

35. Accordingly to the extent indicated above, the writ petitioners are hereby allowed. No order as to costs.

July 3rd, 2006. ----------

l s L. P . S . NARAYANA , J